

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Kenneth R. Pitts, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

March 25, 2022

Court of Appeals Case No.
21A-CR-2564

Appeal from the Vigo Superior
Court

The Honorable Michael J. Lewis,
Judge

Trial Court Cause No.
84D06-1805-MR-1656

Crone, Judge.

Case Summary

- [1] Kenneth R. Pitts, Jr., appeals his aggregate thirty-year sentence imposed following his guilty plea to level 2 felony voluntary manslaughter and level 2 felony burglary, arguing that it is inappropriate based on the nature of the offenses and his character. Concluding that he has failed to carry his burden to show that his sentence is inappropriate, we affirm.

Facts and Procedural History

- [2] On November 10, 2017, seventy-seven-year-old Alice Anita Oswald was reported missing. Oswald's daughter Kara reported that Oswald failed to appear at Harmony Haven No Kill Animal Shelter in Terre Haute that day as expected, she was not at either of the houses that she owned, and her car was missing. On November 13, 2017, the Terre Haute Fire Department responded to a fire at one of Oswald's houses. The fire department determined that the fire was intentionally set with accelerant and ruled it an arson.
- [3] On January 4, 2018, vehicle tracks were discovered leading into a lake that was approximately six and a half miles from Pitts's property. A two-day search of the lake led to the recovery of Oswald's vehicle with a female body inside. The body was identified as Oswald through DNA testing. An autopsy determined that her death was a homicide caused by blunt force trauma.
- [4] The investigation of Oswald's murder revealed that in January 2017, Oswald reported a burglary of her home, for which Pitts was subsequently arrested. The trial court issued Oswald a no-contact order against Pitts. Throughout the year,

Oswald reported additional break-ins. She told the police that she carried a gun and that if she caught someone in her house, she would shoot them. Police received additional information from informants that in November 2017, Pitts had burglarized Oswald's home, and while he was there, she returned, discovered him, and shot him in the face. Pitts then killed Oswald, put her body in her car, and submerged the car in the lake. Several individuals reported that they had seen Pitts with Oswald's personal property.

[5] In May 2018, the State charged Pitts with murder, level 1 felony burglary, level 6 felony altering the scene of death, level 4 felony arson, and level 6 felony obstruction of justice. In June 2021, Pitts and the State entered into a plea agreement in which Pitts agreed to plead guilty to level 2 felony voluntary manslaughter and level 2 felony burglary. The plea agreement specified that the sentences were to run concurrent but otherwise left sentencing open to the trial court's discretion. In October 2021, the trial court accepted the plea agreement.

[6] In determining Pitts's sentence, the trial court found as mitigating circumstances that Pitts lived in poverty, was exposed to criminal behavior at a very young age, dropped out of school, was neglected, was physically, mentally, and sexually abused, and was introduced to drugs and alcohol at a very young age. The trial court found that the mitigating circumstances warranted minimal weight when compared with the following aggravating circumstances: the harm to the victim, reflecting one of the most gruesome crimes the court had seen; Pitts's extensive criminal history, including that he spent thirty-one and a half of thirty-five years in prison; the victim was seventy-

seven years old; Pitts violated Oswald's no-contact order against him as well as conditions of probation and pretrial release; the manner in which Pitts killed the victim and the way he disposed of her body; and Pitts's efforts to elude police by fleeing to Nevada and using false identification. The trial court sentenced Pitts to concurrent terms of thirty years for each conviction. Pursuant to the plea agreement, the trial court dismissed the remaining charges in this cause as well as the charges in three other causes and terminated Pitts's probation unsatisfactorily in two other causes. This appeal ensued.

Discussion and Decision

- [7] Pitts asks us to revise his sentence pursuant to Indiana Appellate Rule 7(B), which states, "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Pitts has the burden to show that his sentence is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218. Although Rule 7(B) requires us to consider both the nature of the offense and the character of the offender, the appellant is not required to prove that each of those prongs independently renders his sentence inappropriate. *Reis v. State*, 88 N.E.3d 1099, 1104 (Ind. Ct. App. 2017); *Connor v. State*, 58 N.E.3d 215, 218 (Ind. Ct. App. 2016); *see also Moon v. State*, 110 N.E.3d 1156, 1163-64 (Ind. Ct. App. 2018) (Crone, J., concurring in part and concurring in result in part) (quotation marks omitted) (disagreeing with majority's statement that Rule 7(B) "plainly requires the appellant to demonstrate that his sentence is

inappropriate in light of both the nature of the offenses and his character.”). Rather, the two prongs are separate inquiries that we ultimately balance to determine whether a sentence is inappropriate. *Connor*, 58 N.E.3d at 218.

[8] When reviewing a sentence, our principal role is to leaven the outliers rather than necessarily achieve what is perceived as the correct result in each case. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). “We do not look to determine if the sentence was appropriate; instead we look to make sure the sentence was not inappropriate.” *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). “[S]entencing is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” *Cardwell*, 895 N.E.2d at 1222. “Such deference should prevail unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant’s character (such as substantial virtuous traits or persistent examples of good character).” *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). As we assess the nature of the offenses and the character of the offender, “we may look to any factors appearing in the record.” *Boling v. State*, 982 N.E.2d 1055, 1060 (Ind. Ct. App. 2013).

[9] Turning first to the nature of the offenses, we observe that “the advisory sentence is the starting point the Legislature selected as appropriate for the crime committed.” *Pierce v. State*, 949 N.E.2d 349, 352 (Ind. 2011). The advisory sentence for a level 2 felony is seventeen and a half years, with a sentencing range of ten to thirty years. Ind. Code § 35-50-2-4.5. Pitts received

the maximum sentence, but the three other charges in this case were dismissed as well as the charges in three other causes. Pitts concedes that the invasion of Oswald's home that led to her death was egregious but contends that Oswald's death was not premeditated and that he acted in sudden heat after Oswald shot him. However, these facts are already accounted for in the reduction of his murder charge to voluntary manslaughter. *See* Ind. Code § 35-42-1-3 (stating that existence of sudden heat is a mitigating factor that reduces murder to voluntary manslaughter).

[10] We detect nothing about the nature of Pitts's offenses that warrants a downward revision of his sentence. Pitts invaded the home of a seventy-seven-year-old woman, whom he had burglarized previously, and then brutally beat her to death with an axe when she attempted to defend her property. Oswald's age was significantly above the statutorily aggravating age of sixty-five. Ind. Code § 35-38-1-7.1(a)(3). Oswald was so badly beaten that DNA analysis was required to identify her body. The trial court viewed a photograph of her body and said, "[T]he harm to the victim was one of the most gruesome crimes I've seen." Tr. Vol. 2 at 28. Pitts attempted to hide his crimes by placing Oswald's body in her car, sinking the car in a lake, and setting Oswald's house on fire. He then fled to Nevada and used false identification to elude police and evade responsibility for his crime.

[11] As for Pitts's character, we observe that an offender's character is shown by his "life and conduct." *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019). One relevant consideration is the offender's criminal history. *Garcia v. State*, 47

N.E.3d 1249, 1251 (Ind. Ct. App. 2015), *trans. denied* (2016). Pitts's criminal history begins with juvenile adjudications for criminal conversion and burglary, which resulted in his placement at the Indiana Boys School. As an adult, he has twenty felony convictions and six misdemeanor convictions and has been imprisoned in the Indiana Department of Correction on at least six separate occasions and the Illinois Department of Correction at least once. Significantly, he had eight convictions for burglary prior to 1998, when he was convicted of four counts of class D felony auto theft and four counts of receiving stolen property and sentenced to an executed term of twenty-five and a half years.

[12] After his release from this lengthy period of incarceration, Pitts returned to a life of crime. In 2015, he incurred another burglary conviction for conduct he committed in 2012. In 2016, he was convicted of level 6 felony maintaining a common nuisance. He was on probation for these crimes when he committed the current offenses. In 2017, he was also charged with level 5 felony intimidation with a deadly weapon, level 6 felony theft, level 6 felony criminal recklessness, level 6 felony pointing a firearm, and misdemeanor battery and criminal mischief in three other causes that were dismissed pursuant to his plea agreement in this case. Pitts also violated the no-contact order issued to protect Oswald from him. Pitts has spent a lifetime involved in criminal activity, and there is absolutely no indication that his contacts with the justice system have deterred him from criminal activity or that he has any respect for the law.

[13] Pitts acknowledges this extensive criminal history, but he argues that the terrible neglect and abuse he endured as a child and his early exposure to crime

and drugs has made it extremely difficult for him to transition to a law-abiding life. We are not unsympathetic to what he went through as a child, but we cannot ignore that his pattern of criminal conduct has escalated and now led him to brutally kill another human being. He asserts that due to his advanced age, his thirty-year sentence is probably a life sentence. That is not necessarily so; given that his sentence is a term of years, it is possible that he will be released before he dies. Regardless, we agree with the State that his “criminal record, brutal killing of Oswald, and subsequent actions show he has spent his lifetime making this aggregate sentence necessary.” Appellee’s Br. at 17. We conclude that Pitts has failed to carry his burden to show that his sentence is inappropriate. Accordingly, we affirm.

[14] Affirmed.

Bradford, C.J., and Tavitas, J., concur.